

**Sign, Display and Allied Trades Local Union No. 1175, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO and Freeman Decorating Company and Teamsters Local Union 769, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 12-CD-299**

19 September 1983

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Freeman Decorating Company, herein called the Employer, alleging that Sign, Display and Allied Trades Local Union No. 1175, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, herein called the Respondent or Local 1175, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Teamsters Local Union 769, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 769.

Pursuant to notice, a hearing was held before Hearing Officer Jack D. Livingston on 7 February 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, an Iowa corporation with its principal place of business in Medley, Florida, is engaged in the business of providing to trade shows and conventions services such as the building and setting up of exhibits. During the year preceding the hearing, the Employer purchased and received prod-

ucts, goods, and materials from outside the State of Florida having a value in excess of \$50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Sign, Display and Allied Trades Local Union No. 1175, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, and Teamsters Local Union 769, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. Background and Facts of the Dispute

As part of its business of providing services to trade shows and conventions, the Employer operates a warehouse to store its own equipment and advanced freight shipments from exhibitors. The Employer employs employees represented by Local 1175 in separate units of show employees and warehouse employees. The show employees unload equipment at show sites and set up convention and trade show exhibits. The warehouse employees unload and load freight at the warehouse and deliver equipment to convention sites.

The Employer transports equipment and freight between its warehouse and various show sites using the following vehicles: two 45-foot tractor-trailers, two 24-foot trucks, one 20-foot flat bed truck, one step van, and one small ("Econo-Line") van. Employees represented by Local 769 have traditionally driven the tractor-trailers, and that work is not in dispute. The work of driving vehicles other than tractor-trailers has, in the past, been assigned to employees represented both by Local 769 and Local 1175.

During the past year, the Employer's business has declined and several members of both Local 1175 and Local 769 have been laid off. Local 769 now seeks exclusive jurisdiction over all the Employer's vehicles, except for the Econo-Line van. The Employer, however, has assigned the work in dispute to employees represented both by Local 1175 and Local 769.

#### B. The Work in Dispute

The work in dispute involves the driving of all vehicles other than tractor-trailers between the

Employer's Medley, Florida, facility and trade show and convention sites.

### C. *The Contentions of the Parties*

The Employer contends that it has assigned the work in dispute to employees represented by Local 1175 and prefers to continue that assignment. The Employer asserts that the award of the disputed work to Local 1175 employees is appropriate in view of the collective-bargaining agreement between Freeman Decorating Company and Local 769,<sup>1</sup> economy and efficiency of operation, company and area practice, and the fact that the vehicles in question do not require any specific skills or training to operate.

Respondent asserts that the disputed work should be awarded to employees represented by Local 1175 for the reasons set forth by the Employer. Respondent also contends that the Employer has historically assigned the work to employees covered by its contract. The business agent for Local 1175 testified that he agreed to let teamsters drive the vehicles in question as long as Local 1175 employees were working full time. He alleged that he did not raise this issue at a time of full employment but now that there have been layoffs, he must do so to protect the warehouse employees.

Local 769 takes the position that it was the Employer's past practice to assign the driving to teamsters. In addition, the first contract between Local 769 and the Employer's predecessor recognized Local 769 as the sole bargaining agent for all tractor-trailer and truckdrivers. Local 769 argues that this clearly demonstrates that the disputed work should be assigned to employees it represents. Local 769 also contends that, even after the deletion of "truck drivers" in subsequent contracts, the Employer stated in negotiations that there would be no change in the assignment of disputed work. Finally, Local 769 points out that the contract between Local 1175 and the Employer specifically excludes truckdrivers.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

With respect to (1), above, the parties stipulated, and we find, that on or about 7 December 1982 Frank Martinez, Local 1175 business agent, told

Louise Murray, the Employer's general manager, that the driving of trucks other than tractor-trailers was the work of Local 1175 and it would strike if the Employer did not continue to assign that work to employees represented by Local 1175.

With respect to (2), above, the parties stipulated that there is no agreed-upon method for the adjustment of this dispute.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

### E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.<sup>2</sup> The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.<sup>3</sup>

The following factors are relevant in making the determination of the dispute before us:

#### 1. *Collective-bargaining agreements*

The Employer is a party to two collective-bargaining agreements with Local 1175. One contract covers show unit employees who prepare, erect, and maintain the different displays and exhibits at conventions and trade shows. The other contract encompasses the following employees:

All full-time and regular part-time warehouse employees employed by the Employer, excluding truckdrivers, fork-lift operators, seamstress employed in drapery department, office clerical employees, guards and supervisor as defined in the Act.<sup>4</sup>

The Employer also entered into a contract with Local 769. This contract covers all "tractor trailer drivers employed by the Employer in Dade County, Florida."<sup>5</sup>

<sup>2</sup> *NLRB v. Electrical Workers Local 1212 [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

<sup>3</sup> *Machinists Lodge 1743 (J. A. Jones Construction Co.)*, 135 NLRB 1402 (1962).

<sup>4</sup> On 18 September 1980 Local 1175 was certified by the Board as the collective-bargaining agent for Employer's warehouse employees.

<sup>5</sup> The contracts between the Employer and Local 1175 covering the warehouse employees and Local 769 were initially executed by Greyhound Exposition Services, Inc., which was subsequently purchased by Freeman Decorating, Inc. Freeman agreed to be bound by the existing collective-bargaining agreements.

<sup>1</sup> The Employer maintains that this contract which covers all tractor drivers specifically restricts Local 769's jurisdiction to "tractor" driving.

The Employer contends that the language in the contract with Local 769 clearly and unambiguously restricts Local 769's jurisdiction to tractor-trailer driving. Contending that any reference to the disputed work was purposely omitted from Local 769's contract, the Employer points to the fact that during negotiations it rejected Local 769's request for exclusive jurisdiction.

Local 769 however, argues that the Employer's contract with Local 1175 warehouse employees specifically excludes truckdrivers. Local 1175 maintains that the reference to truckdrivers applies only to the tractor-trailer drivers represented by the Teamsters.

Local 769's contract does not specifically include the driving of vehicles other than tractor-trailers. Similarly, the contract between the Employer and Local 1175 does not specifically exclude the work in dispute. Accordingly, we are unable to rely on contractual considerations in awarding the work in dispute.

## 2. Company and area practice

Both Local 769 and Local 1175 maintain that, in the past, the Employer has assigned the work to employees represented by each of them. Local 1175 contends that initially employees it represents drove the vehicles to show sites and that subsequently teamsters started driving those vehicles. Local 1175 argues that, as long as the employees represented by it were working full time, teamsters were assigned the disputed work. The Employer claims that it assigned the work to Local 1175 employees whenever possible. Local 769 maintains that the Employer historically assigned the work to employees it represents and only assigned the work to Local 1175 when all teamsters were working. The record does not support the contentions of one party over the other. Accordingly, we cannot rely on the Employer's past practice in determining the work in dispute.

With respect to area practice, the Local 1175 business agent testified that other companies in the area performing trade show and convention work assign the disputed work to employees represented by Local 1175. Local 769 adduced no evidence that teamsters perform any of the disputed work in the relevant area. We therefore conclude that area practice favors awarding the disputed work to employees represented by Local 1175.

## 3. Relative skills

It appears from the record that the disputed work requires little skill. The record also shows that employees represented by both Local 1175 and Local 769 have driven the vehicles in question and

have already demonstrated that they are fully capable of performing the disputed work. Consequently, as both groups of employees possess the necessary skills, we cannot rely on this factor in awarding the disputed work.

## 4. Economy and efficiency of operation

The Employer maintains that the factors of economy and efficiency support assignment of the disputed work to employees represented by Local 1175. The record indicates that, after Local 1175 warehouse unit employees make deliveries, they return to their other warehouse duties. However, teamsters may often stand idle between deliveries, waiting for the warehouse unit employees to load and unload the equipment. According to the Employer, by assigning the disputed work to employees represented by Local 1175, it needs fewer employees to perform the same amount of work. We find that the factors of economy and efficiency favor awarding the work in dispute to employees represented by Local 1175.

## 5. The Employer's preference

The Employer prefers to continue assigning the disputed work to its employees represented by Local 1175. We therefore find that this factor favors awarding the disputed work to employees represented by Local 1175.

## Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Sign, Display and Allied Trades Local Union No. 1175, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, are entitled to perform the work in dispute. We reach this conclusion relying on the relative efficiency and economy of the Employer's operation resulting from such an assignment, the prevailing area practice, and the Employer's preference in assigning the work in dispute to employees represented by Local 1175. In making this determination, we are awarding the work in question to employees who are represented by Sign, Display and Allied Trades Local Union No. 1175, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

## DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of

the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of Freeman Decorating Company, who are represented by Sign, Display and Allied Trades Local Union No. 1175, affiliated with the

International Brotherhood of Painters and Allied Trades, AFL-CIO, are entitled to drive all vehicles other than tractor-trailers between the Employer's Medley, Florida, facility and trade show and convention sites.